

**CONSUMER PROTECTION and GOVERNMENT OPERATIONS
of the
SUFFOLK COUNTY LEGISLATURE**

Minutes

A regular meeting of the Consumer Protection and Government Operation Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, Veterans Memorial Highway, Smithtown, New York, on Thursday, **March 6, 2003.**

MEMBERS PRESENT:

Legislator Cameron Alden - Chairman
Legislator William Lindsay - Vice-Chair
Legislator Lynne Nowick
Legislator Angie Carpenter

ALSO PRESENT:

Paul Sabatino - Counsel to the Legislature
Ed Hogan - Aide to Legislator Nowick
Warren Green - Aide to Legislator Alden
Meghan O'Reilly - Aide to Presiding Officer Postal
Charles Gardner - Director of Consumer Affairs
Joe Muncey - Budget Review Office

MINUTES TAKEN BY:

Donna Catalano - Court Stenographer

(*THE MEETING WAS CALLED TO ORDER AT 9:25 A.M.*)

CHAIRMAN ALDEN:

Good morning. I think we'll start the Consumer Protection Committee Meeting with the Pledge, and we'll have that led by Legislator Angie Carpenter.

SALUTATION

CHAIRMAN ALDEN:

Okay. Charlie, if you want to come up for a minute. If you want to take a couple of minutes and give us a brief overview of how we're doing complaint wise. And actually, then just give us a little thing on gas and oil and reserves.

DIRECTOR GARDNER:

There are three pieces of information that each of the committee members should have. One is the -- for comparison purposes and reference is the yearly log of activities. It highlights all of our major perimeters and gives the last four year comparison from complaints received down through speaking engagements. All of those bits of information are the total of our three bureaus; Weights and Measures, Complaints and Licensing. And again, these are the important perimeters that we use to document all of our activities; complaints, violations, hearings, criminal charges, arrests, revocations, money, penalties, etcetera. So that's a -- that's a four year log.

You also should have the latest home heating oil price survey as of yesterday and gasoline price survey. They continue to inch up as is pretty obvious for anyone who drives around or using heating oil. We're still less than our historic highs. Home heating oil, remember we were as high as an average of almost \$2.30 a gallon three years ago. And right now the average is about a \$1.84. The range is from a buck and a half to 2.20 a gallon right now. Gasoline is averaging about \$1.80 gallon regular. The all time high in Suffolk County was \$1.88 back in May of '01. And obviously, that's dependant on many factors that are beyond our control. Also, you should have received, in answer in your request, Mr. Chairman, about the mission statement, you got that information I trust.

CHAIRMAN ALDEN:

Yes, and I passed that on to the Presiding Officer's Office. Thanks.

DIRECTOR GARDNER:

Okay. Fine.

CHAIRMAN ALDEN:

Charlie, any hot spots, like supermarkets or --

DIRECTOR GARDNER:

Item pricing continues to be a problem and scanning overcharges with some of the same chains that have been the consistent violators, such as Waldbaums, WalGreens, Genovese. They are just -- the number of inspection have increased, and the amount of failures just keep piling up. I'd like to point out that King Kullen and Stop and Shop and the

IGAs are still doing -- basically in full compliance. So it's not a problem with the law. It's not a law that cannot be enforced nor probably adhered to. It's just some chains, I think made a conscience decision they're just not going to comply. So we have had to step up the inspections, and we have.

CHAIRMAN ALDEN:

I want to thank you for the help that you gave us on that -- the incident up in Brentwood. So I want to thank you on that. That was very speedy. Legislator Lindsay.

LEG. LINDSAY:

Charlie, when you find a violation of the item pricing law, what is the fine?

DIRECTOR GARDNER:

The maximum right now \$2,000 per inspection.

LEG. LINDSAY:

And the chains that are violating laws seem to cough up the two grand with out any qualms?

DIRECTOR GARDNER:

Yep. We have -- the last 20 inspections, the last 20 penalties leveled against Waldbaums for instance, the average penalty for those 20 is about \$1400, and they're just -- they're paying.

CHAIRMAN ALDEN:

Bill, I have a --

LEG. LINDSAY:

Do you think the fines are too low?

DIRECTOR GARDNER:

Well, I don't think that it's -- I don't know that we could make the penalties so high that it would counter what these chains have done. In other words, what they have figured out is that per store, even if it's -- even in a large store, if they decided that it would take one employee. Now when you add salary and benefits, you know, you figure it out, whatever it is that employee was going, 25 or \$30,000 a year say, there are approximately 140 supermarkets in the County, and there's another 200 stores, let's say Targets and Genovese and WalMarts and CVS, WalGreens, etcetera, we wouldn't make that number of inspections per year in each store. So while the item pricing fines have gone from just a few years ago, 10 of \$12,000 a year, we're now collecting over \$100,000 a year. But they're looking at it on a per store basis. They say, well, even if he hits my store, you know, every month, it's going to be cheaper than hiring somebody. And that seems to be the prevailing corporate attitude amongst some of the chains.

Now again, I have to point out, King Kullen, almost 100% compliance; Stop and Shop, very good compliance; most of your IGAs, excellent compliance. So that's another reason why we have stepped up our inspections of the stores that are in non compliance, because remember -- as you see in the correspondence that we just gave you, the mission

of the office is consumer protection and also a level playing field in the market place. And it's not fair what some stores are complying and spending whatever funds is necessary to comply while others are not complying. That's no longer a level playing field. So we have focused our -- those scanning and item pricing inspections on the non compliance stores.

LEG. LINDSAY:

It's really troublesome to me to see the disparity in the market place, that some chains just blatantly ignore the law.

DIRECTOR GARDNER:

I have to tell you that the last round of inspections where probably the worst results we've had from Waldbaums.

LEG. LINDSAY:

Can we just key in on the offending chains?

DIRECTOR GARDNER:

That's what we're trying to do.

LEG. LINDSAY:

I mean, if we can't raise the fines anymore, maybe we could just increase the frequency.

DIRECTOR GARDNER:

Yep. That's exactly what we're in the process -- we are doing that and have been now for the last four or five months.

LEG. LINDSAY:

Why can't we raise the fines?

DIRECTOR GARDNER:

Well, there is a pending amendment to the existing -- to the current law that would increase fines.

LEG. LINDSAY:

Wonderful. Okay.

LEG. CARPENTER:

On the issues of the fines, tell me exactly what they are right now.

DIRECTOR GARDNER:

Fifty dollars per violations with a maximum of \$2000 per inspection. And that 2000 is only when it's a second inspection within a 12 month period.

LEG. CARPENTER:

When it's per violation, you go into the store and there are ten things that aren't marked and it's 50 bucks a pop or --

DIRECTOR GARDNER:

A violation is any three or more of one commodity.

LEG. CARPENTER:

So when you're in the store, you can easily get to 2000 if they are

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non compliant.

DIRECTOR GARDNER:

Absolutely. Absolutely. Yes.

LEG. CARPENTER:

Okay. And what about someone's who's a repeat offender like Waldbaums?

DIRECTOR GARDNER:

That's the cap. In other words, the first inspection in a store -- let's say I haven't been in a store for a while or a store has not had a violation in the last 12 months. We conduct an item pricing inspection. For every violation that we find, the maximum penalty is \$50 and \$1000 for the inspection, maximum. The second time in 12 months it doubles. So now it's 100 or \$2000. So in other words, even if I found 500 violations, the maximum penalty is \$2000.

LEG. CARPENTER:

Okay. And Waldbaums, it's happened more than twice.

DIRECTOR GARDNER:

Yes.

LEG. CARPENTER:

So it's still 2000? I mean, to me there should be a \$5000 surcharge if you've been a repeat offender. And we've been in their stores consistently. And I don't know, you said, I guess you're looking at -- I would definitely recommend that there be a, you know, flat big fine for someone whose been cited that many times, because it's not fair to, as you said, the King Kullens who are hiring the personal to comply with the law. It's putting them at an unfair advantage because they're cost of doing business is higher than the guy who is not doing it. And it just isn't fair.

DIRECTOR GARDNER:

We have quadrupled our number of inspections.

LEG. CARPENTER:

I'm working on legislation right now, and I need to talk to you about it, and I will do it privately, but posting the offenders on the website. The item pricing offenders should be on the website. There some negative publicity, if you will, for what they are doing so that we can encourage and reward those that are complying.

DIRECTOR GARDNER:

We are -- it just so happens that that's our project that our tech is working on right now. We just got finished adding several more consumer oriented links on the website. We just updated the ten worst unlicensed offenders, and we are going to be adding a page for just general consumer violations, just like that. That's going to be up in a week or two.

LEG. CARPENTER:

Great. Also -- all right.

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DIRECTOR GARDNER:

I must point out that the website is much easier for us to do now because we have our own person on staff, and we have had now for a year or so. Prior to that, as you know, the way -- off the record, you know how the County works, trying to get things done from other agencies -- but we now have our own person. So -- and he's very at depth at it. So our website now is a work in progress. I continually review it, staff continually reviews it, we're adding to it. And now when we want to change something or add to it, it's a snap. I mean, literally you can do it within an hour.

LEG. CARPENTER:

I think too by doing that it alerts the public that the item pricing law is in effect, because some people still are not aware it of. And it will encourage people to report offenders to you so that it will make the inspections that you do that much more focused and productive, because you know right off the bat that this is someone that's not complying. So it's not like --

DIRECTOR GARDNER:

Hopefully that's the message that we'll be able to get out on that page of the website. So we'll get people to be much more aware of it.

CHAIRMAN ALDEN:

Legislator Nowick.

LEG. NOWICK:

Good morning, Charlie, how are you. And by the way, off the record, you better shut that thing off. They tell me it's on the record. I have two thoughts on this. Why don't you deputize the Legislators?

We're always in the store. And every time I'm in the store and in the produce department, you have to go find the scanner because it's not marked. I'm ready, give me the right.

DIRECTOR GARDNER:
Any time. Any time.

LEG. NOWICK:
You've got 18 of us out there.

DIRECTOR GARDNER:
Much of our information comes from our own employees.

LEG. NOWICK:
But I'm not kidding. It wouldn't be a bad idea. That's 18 different people out there saying, you know, be aware that we're out there shopping.

DIRECTOR GARDNER:
Sure. Well, that's part of our -- again, part of our mission is we depend on all the consumers to be our eyes and ears, because no matter how large the staff is, it's impossible to monitor the literally millions of transactions that occur. So we need people to be our eyes and ears and report discrepancies, whether it's in the gasoline stations, the home heating oil deliveries, in the market place.

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LEG. NOWICK:
I'm ready on the spot to go up to the management. I saw it yesterday. But anyway, the other thought I also had was would be it of any value to this committee to have the -- I'm going to say managers of all the different supermarket come in front of us, the ones that are complying as well as the ones that are not and have them sit in front of us, have the ones that are not complying face the ones that are complying and explain to them that this is not -- what did you say the field was -- a fair playing field?

DIRECTOR GARDNER:
Level playing field.

LEG. NOWICK:
I don't know. Maybe we can get them to comply that way if they have to face us.

CHAIRMAN ALDEN:
We'll need a little subpoena for that. And I think on the first thought that you had, we'll need the police power, because I wouldn't want to go in there without being armed.

LEG. NOWICK:
I'm ready.

CHAIRMAN ALDEN:
Good. Okay.

DIRECTOR GARDNER:
Well, it was only about a year or so ago that my counterpart in Nassau County and I sponsored a day long seminar. We had all the top executives and operation managers from all of the supermarket chains as well as the drugstore chains had a meeting at which the topic was item pricing and scanning. And there were some very interesting comments at the meeting. But they are fully aware of what the law requires, and they are fully aware of their responsibilities. And again, some for reasons know maybe only to them choose not to comply. So the onus is on us to make it -- I don't know that we can make it more financially -- well, we can't make it more financially harmful under the current statute, that's why we're looking at the amendment to the caps.

CHAIRMAN ALDEN:
I'm not ready to pass mine today, but at the next committee meeting, I will have the new draft completed. And it's going to go after people that violate the scanning. So in other words, if you get overcharged at the scanner, it's going to increase those fines, and it's also going to increase the fines dramatically for those violators that have gotten the warning and then gotten one so-called conviction on it. It's going to really raise that a lot, actually to the point where we might be able to balance the budget.

LEG. LINDSAY:
Mr. Chairman, could you give us a preview of what -- how much you are increasing the fine?

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CHAIRMAN ALDEN:
I'm thinking to take it up somewhere around \$10,000 range on a multiple offense. Not the first offense, because, you know, like that you catch anybody on a bad day. But on a multiple offense when they've, you know, been found in non compliance, given an opportunity to come into compliance and then they continue to just take the find rather than, you know, higher the people to do the job. I think it should be a substantial difference.

LEG. LINDSAY:
I think that's important. I think that there should be a definitive line between total disregard for the law and oversight.

CHAIRMAN ALDEN:

That's where I'm having the most trouble crafting, you know, that type of paragraph that would bring it into, you know, we want to kick it into some kind of overdrive at some point, but that's where I'm having the, you know, most drafting problems.

DIRECTOR GARDNER:

I could supply copies of our inspection reports for instance that show some stores that fail and get a fine; 400, 500, \$600. There's a mix. Ten of these are marked, ten aren't, 14 are marked, 25 aren't. As opposed to other inspection reports where you look down and under the column that's headed, items marked, it's all zeroes. I mean, that's a difference. You know, that's a big difference in somebody who maybe they forgot -- you know, they packed out an aisle and just forgot to mark it or something and the rest of the store is okay. But there are stores, I can show the you reports, where it's all zeroes. That's deliberate, that's not -- that's not carelessness, that's not sloppy, that's not having a bad day, that's deliberate.

LEG. NOWICK:

Now, that's not the item scanning, that's the other.

DIRECTOR GARDNER:

That's item price, right. No individual item prices on the -- on the commodities that are required to have --

LEG. NOWICK:

It's all over. And yours is the item scanning.

CHAIRMAN ALDEN:

No, mine is both. Item pricing and item scanning. Item scanning we have to watch out because most stores are significantly in compliance. It's just when you go through with a test basket, one out of 100 items is charged more than is should be charged, more than it's marked.

LEG. NOWICK:

So it's marked one way and scanned another way.

CHAIRMAN ALDEN:

Right. And that I'd like to raise the fine on that, but that wouldn't be as significant as far as raising the fine, even though that's a very -- in my estimation -- a significant violation of the public

trust.

DIRECTOR GARDNER:

For instance, we had an inspection last week, I won't name the store because we haven't had the hearing yet, the case isn't closed, but we brought 25 items. Six of the items were overcharged out of the 25.

LEG. LINDSAY:

Was ther any undercharged?

DIRECTOR GARDNER:

There was one undercharged and six overcharged.

LEG. NOWICK:

Now, that's a grocery store?

DIRECTOR GARDNER:

That was a -- yes, it was.

LEG. NOWICK:

But the -- just to make it clear to me, the item scanning, is that for other stores as well as grocery stores?

DIRECTOR GARDNER:

That's for any place, yes.

LEG. NOWICK:

No wonder why K-Mart went out of business.

CHAIRMAN ALDEN:

Any other thoughts?

LEG. NOWICK:

Good idea, Cameron.

CHAIRMAN ALDEN:

Thanks. And I'll circulate it once I, you know, do the final draft. I'm work with the Paul on that, and I'll be doing that in the next couple of days.

TABLED RESOLUTIONS

1952-02. Adopting Local Law No. -2002, a local law to require retail food establishments to disclose sugar, salt, fat and carbohydrate contents to purchasers of food products. (POSTAL)

CHAIRMAN ALDEN:

Okay. We'll go right to the agenda then. Tabled resolutions, we have 1952. That's our Presiding Officer Postal's legislation. And I did not get anything further from her. The last I was -- I was told by the Presiding Officer was that she needed a little more time on that one. So I'm going to make a motion to table, seconded by Legislator Carpenter. All in favor? Opposed? TABLED (VOTE: 4-0-0-0)

2057-02. Adopting Local Law No. -2002, a local law updating regulations for precious metal exchanges and dealers in secondhand articles. (CARPENTER)

CHAIRMAN ALDEN:
Legislator Carpenter.

LEG. CARPENTER:
We're still working on it, it should be ready to be moved next month.
So I make a motion to table.

CHAIRMAN ALDEN:
Motion to table by Legislator Carpenter, seconded by myself. All in
favor? Opposed? TABLED. (VOTE: 4-0-0-0)

2297-02. Adopting Local Law No. -2002, a charter law directing
Suffolk County action to roll back cable television rates in Suffolk
County. (ALDEN)

CHAIRMAN ALDEN:
That's in a public hearing, so I'm going to make a motion to table,
seconded by Legislator Nowick. All in favor? Opposed? That stands
TABLED. (VOTE: 4-0-0-0)

We don't have any new Introductory Resolutions. Any other business
that anybody wants to bring before this committee? Legislator
Lindsay.

LEG. LINDSAY:
At the last meeting, Consumers Meeting, we had a discussion with
Charlie about the legislation that's due to come into effect July 1st
about the process servers. Do you have any new information on that?
There was a concern about us being able to enforce it the way it's
written right now.

CHAIRMAN ALDEN:
We've conveyed those concerns to Legislator Postal, and I believe she
as the prime sponsor is working on some modifications.

LEG. LINDSAY:
I just wanted to know if the information went back.

CHAIRMAN ALDEN:
Thanks. All right. Seeing no further business coming before us, I
make a motion to adjourn, seconded by Legislator Lindsay. All in
favor? Opposed? Thank you. We stand adjourned.

(*THE MEETING WAS ADJOURNED AT 9:40 A.M.*)

{ } DENOTES BEING SPELLED PHONETICALLY